
CHAPTER 42

PUBLIC ACCESS TO MICROFILMED RECORDS CONTAINING RESTRICTED CRIMINAL HISTORY INFORMATION

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Indiana courts may now order court records restricted from public access under legislation that prohibits access to criminal history information. [I.C. 35-38-8](#). A dilemma is, however, present in allowing access to microfilmed records that may contain the restricted criminal history information. If the public is permitted to have unfettered access to those records, the public could see the restricted criminal history information. If the public is denied access to those records, the public is prevented from examining records that should be publicly accessible.

Under [Ind. Administrative Rule 9\(L\)](#), a court, court agency, or clerk of court employee who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for the disclosure. However, knowingly allowing public access to microfilmed records containing restricted criminal history information may compromise this immunity. An argument can also be made that the immunity contained in [Admin. R. 9\(L\)](#) applies only to court records declared confidential under [Rules 9\(G\)](#) and [9\(H\)](#) and may not apply to records restricted by the statutes mentioned above.

The Division recommends that the best framework to resolve the dilemma is through a local rule that establishes a protocol after thorough discussion of the options and public comment. There are many ways in which clerks use microfilm and scanning systems, and a best practice that would have widespread application is difficult to recommend.

As petitions to restrict access to criminal history information are filed, the Division recommends that the location of the case file in question be determined. If it is in a microfilm storage box, it should be marked as containing restricted court records with instructions that a supervisor be consulted so that access to the records can be handled under the protocol established by the local rule. For records that have been scanned, the scanning technology may make the solution simpler. If a petition to restrict access is granted, the file in question should be marked and access to it should be granted only under the protocol established by the local rule. While the Division welcomes feedback on the resolution of this dilemma, the optimal solution may ultimately be legislative.

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